

Spring 1998 Professional Responsibility IPI #1, 2

IPI #1

Professional Responsibility

Prof. Brill

Spring 1998

IPI #1

Instructions

Choose the best answer for each question. Put the letter on the answer sheet. If you feel a question is misleading or ambiguous, place an Asterisk (*) next to your answer and write your qualification on the back of the answer sheet. You may choose any of the lettered responses. You have 30 minutes for this IPI. The answer sheet must be turned in by the time written on the blackboard.

1. Client Carl brings \$15,000 to Attorney Alice for safe-keeping. Attorney Alice puts it into her trust account. At the current interest rate, it will yield \$40 for the expected period that the attorney will hold it.

- A) The attorney is entitled to the interest.
- B) The client will receive the interest.
- C) Interest will be paid to the IOLTA Foundation.
- D) Interest cannot be paid to the IOLTA Foundation, unless the client consents, because otherwise it would be an unconstitutional taking of the property.
- E) Client must be informed that he has a right and the option to set up a separate account to receive the interest.
- F) To simplify matters, Attorney may place the money into a non-interest earning account.

2. Jim, a young Springdale lawyer, places an advertisement on television. An attractive supermodel named "Verrique" announces in a husky voice, "I go to Jim when I need an attorney. He can help you also." Verrique did go to Jim once for legal advice, but on this occasion Jim paid Verrique to be in the television advertisement.

In response to the advertisement, Client Conrad came to Jim with a major personal injury case, and Jim signed him up on a 1/3 contingency fee basis. The next week with the consent of Conrad, Jim transferred the case to a major Little Rock firm. Jim and the Little Rock firm agreed in writing that they would be jointly responsible for both discipline and malpractice matters.

Jim did not do any work on the case. When the Little Rock firm settled the case, it sent 35% of the fee to Jim for his referral. Conrad did not know how the fee was shared between Jim and the Little Rock firm.

- A) The advertisement is misleading and unethical.
- B) It is unethical for Jim to pay Verrique to be in the advertisement.
- C) The 35% referral was unethical because Jim did not do any work on the case.
- D) The 35% referral was unethical because Conrad did not know how the fee was split.
- E) Jim has not violated any ethical rules.

3. The following statements concern the Supreme Court Committee on Professional Conduct. Only one statement is correct. Which one?

- A) The Committee has a 5 year statute of limitations for disciplinary proceedings.
- B) The Committee cannot discipline an attorney who says to a witness, "Please lie in the deposition."
- C) The Committee consists of 7 attorneys.
- D) The Committee can only discipline an attorney upon a showing of clear and convincing evidence.

E) Because of double jeopardy, the Committee cannot discipline an attorney who has been acquitted on criminal charges for the same conduct.

F) Under the phrase of "conduct that is prejudicial to the administration of justice", a lawyer may be disciplined for office mismanagement that results in void default judgments being issued against innocent parties.

G) Lawyers cannot be disciplined for conduct that is unrelated to the practice of law, such as public intoxication, public sexual indecency, or tax violations.

4. A first year law student, clerking for a private firm, may:

- (1) draft pleadings.
- (2) interview witnesses
- (3) give legal advice.
- (4) conduct depositions in the presence of the lawyer.
- (5) question witnesses at trial in the presence of the lawyer.

- A) Only (1) and (2) are permitted.
- B) Only (3) and (4) are permitted.
- C) Only (1), (2) and (4) are permitted.
- D) Only (2), (3) and (4) are permitted.
- E) Only (1), (4) and (5) are permitted.

5. A lawyer who had a successful plumbing business has just graduated from law school and been admitted to the practice of law. Which of the following can he ethically do?

- (1) put "experienced plumber" on his business card.
- (2) give a speech on Mechanics Liens to all the local plumbing contractors and say at the conclusion "I understand your situation. I've been there. I would sincerely like to represent you in all your legal needs. Please call me for an appointment."
- (3) personally visit all the CPAs in town and give them his card.
- (4) visit a former plumbing customer currently in the hospital and say "I fixed your pipes four years ago and now I can handle your personal injury case."
- (5) call an athlete and say "I have read in the paper that you have been accused of a felony. I will represent you for free."

- A) Only (1), (2) and (4) are permitted.
- B) Only (1), (3) and (5) are permitted.
- C) Only (1), (2) and (3) are permitted.
- D) Only (2), (4) and (5) are permitted.
- E) Only (3), (4) and (5) are permitted.

6. A lawyer and a certified public accountant and a certified life underwriter wish to serve the public in the area of comprehensive estate planning and related services. The lawyer will draft wills and trusts. How can they do so?

- (1) The lawyer hires the CPA and the CLU as employees.
- (2) They practice in the same suite of offices, and with a common waiting room and a single secretary; but with separate checking accounts, separate fee arrangements with clients, separate listings in the telephone book, separate letterhead, separate relations with the state and federal governments.
- (3) The CPA and the CLU set up a partnership and hire the lawyer as an employee; the partnership provides complete services, including legal services to the clients; the client pays the partnership.
- (4) The three form a corporation, "Estate Planning, Inc." and market themselves to the public. The client is billed for the services provided and pays the corporation.

In which of the above can the attorney ethically participate?

- A) None of the above.
- B) Only (1) and (2).
- C) Only (1) and (4).
- D) Only (1), (2) and (3).
- E) Only (2) and (3).
- F) Only (2) and (4).
- G) Only (2), (3) and (4).
- H) Only (3) and (4).
- I) All four of the above.

7. Plaintiff Peter sued Defendant Dave for personal injuries and property damages arising from an automobile collision. Peter's attorney was given specific authority by Peter to settle the case. A settlement was finally reached. Dave Duncan's attorney transmitted the check and release to Peter's attorney. Peter's attorney accepted the check and properly wrote a check to Peter. Three days later (before endorsing the check) Peter called his attorney and informed him that he changed his mind and wanted to retract the settlement. There is no contention of fraud or overreaching. Peter's attorney's actions here make the settlement:

- A) non-binding, because Peter himself was not present at the settlement.
- B) binding, because once an attorney is hired, his actions are binding as if they were his clients.
- C) non-binding, because Peter never signed the settlement check.
- D) binding, because when a client gives his attorney specific authority to enter into a compromise or settlement, such an agreement is valid and binding on the client.

8. Andrea Advocate is an attorney, who has practiced for eight years in Illinois. She has moved to Jonesboro, where she is a salaried attorney for a bank. One of her responsibilities may be to represent the bank in foreclosure proceedings in state court.

- A) Because she has substantial experience, she can be admitted to the practice of law in Arkansas by reciprocity.
- B) She should seek admission pro hac vice.
- C) Because she is a salaried bank employee, and not in private practice, she does not need to be concerned about admission to practice in Arkansas.
- D) Provided she engages only in office practice for the bank (such as writing title opinions), she does not need to be admitted to practice.
- E) She must take the Arkansas bar examination, regardless of whether she brings foreclosure actions for the bank or engages in office practice for the bank.

9. Vince is a distinguished employee with more than 30 years' experience at his corporation. In January 1996 a new manager publicly and verbally denounced Vince, "You're lazy and incompetent and you sleep on the job."

In June 1996 Vince went to Alan the Attorney (who was a 1995 law school graduate) and said he had been publicly insulted and he wanted to sue the manager for defamation. Alan said: "I'll take care of it. I'll write a letter demanding a public retraction. Otherwise, we'll sue him. Don't pay me yet. We'll talk about my fees later."

Alan wrote the letter in July 1996, but the manager ignored it. When Alan began to prepre his lawsuit in March 1997, he discovered to his shock what he had never learned in law school: While the statute of limitations for written defamation (libel) is 3 years, the statute for oral defamation (slander) is only one year. He explained the mistake to Vince by saying "these rules are so complex that hardly any lawyers understand them."

Assume that Vince locates another attorney who sues Alan for legal malpractice. Which of the following grounds or arguments offers the best chance for Attorney Alan to avoid liability to Client Vince?

- A) the lack of an attorney-client relationship, because there was no fee arrangement

- B) the comparative fault of plaintiff Vince, because he waited so long to contact an attorney
- C) the innocent mistake of the inexperienced attorney
- D) the barrister's rule
- E) the complexity of the legal issue
- F) the inability of Vince to demonstrate damages in a "trial within a trial"

10. Attorney is a member of the bar and a practicing attorney. One of his clients, Mary Smith, in the course of seeking legal advice, has told Attorney that Smith has had financial reverses because her former attorney (FORMER) stole money from her. Mary Smith told Attorney that she does not want Attorney to reveal this information because of her concern for Former's sick wife, who is Smith's sister and would be devastated if she knew of Former's financial dealings.

Is Attorney subject to discipline if he does not reveal this information to the disciplinary authorities?

- A) No, because his duty is to conduct a preliminary investigation by himself.
- B) Yes, because he must report such unfavorable information to the appropriate tribunal empowered to investigate.
- C) No, because the information is privileged or confidential.
- D) Yes, if he concludes that Smith's concerns for Former's wife is groundless.
- E) No, unless the amount stolen is large.

IPI #2

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IPI #2

Instructions

Choose the best answer for each question. Put the letter on the answer sheet. If you feel a question is misleading or ambiguous, place an Asterisk (*) next to your answer and write your qualification on the back of the answer sheet. You may choose any of the lettered responses. You have 30 minutes for this IPI. The answer sheet must be turned in by the time written on the blackboard.

1. Attorney is drafting a trust for Client. The trust will name the Bank as trustee. In which of the following situations must the attorney make disclosure and seek consent of the client?

- (1) Attorney rents office space in Bank.
- (2) Attorney has law office and trust checking accounts in Bank.
- (3) Attorney has represented Bank in the past.
- (4) Attorney owns 5% of stock in Bank.

Attorney must disclose and seek client consent in:

- A) All four situations.
- B) None of the four.
- C) Only (2), (3) and (4).
- D) Only (3) and (4).
- E) Only (3).
- F) Only (4).

2. Attorney represents a criminal client accused of murder. Client says in confidence "I did it."

- (1) While the criminal case is proceeding, Attorney can sign a contract agreeing to write a book about the case when it is over, provided he discloses nothing confidential.
- (2) While the criminal case is proceeding, Client can sign a media contract and can promise to pay Attorney from any proceeds when they are received.

(3) After the criminal case concludes, attorney can sign a book contract and in his book can write "Client told me, 'I did it'."

(4) After the criminal case concludes, and after the client has been executed, Attorney can write a book and can write "Client told me, 'I did it'."

Which of the above are ethically permissible?

- A) None are ethical.
- B) All are ethical.
- C) Only (1) and (2).
- D) Only (1) and (3).
- E) Only (2) and (3).
- F) Only (3) and (4).
- G) Only (1).
- H) Only (2).
- I) Only (3).
- J) Only (4).

3. Kelly Criminal has been arrested and charged with the murder of Vinny Victim. Kelly has retained Dudley as her defense attorney. During a meeting between Dudley and Kelly, Kelly admits to Dudley that she did, in fact, kill Vinny. At Kelly's trial, it becomes apparent that the Government's case is based entirely upon circumstantial evidence. Which of the following options would allow Dudley to effectively defend Kelly while, at the same time, allow Dudley to comply with the relevant Rules of Professional Conduct?

(1) In the closing argument, Dudley asserts that, "In my opinion, Kelly is innocent."

(2) In the closing argument, Dudley asserts that, "I know that Kelly Criminal did not kill Vinny."

(3) In the closing arguments, Dudley states "The government has not proven beyond a reasonable doubt that Kelly killed the victim."

(4) Dudley puts Kelly on the stand and elicits her testimony that, "I didn't kill Vinny. I loved him!"

- A) Only (1) and (3) are ethical.
- B) Only (1) and (4) are ethical.
- C) Only (2) and (3) are ethical.
- D) Only (2), (3) and (4) are ethical.
- E) Only (1), (2) and (3) are ethical.
- F) All are ethical.
- G) None are ethical.
- H) Only (1) is ethical.
- I) Only (2) is ethical.
- J) Only (3) is ethical.
- K) Only (4) is ethical.

4. A new client comes to your office and says: "Here is \$50 for 30 minutes of consultation. I just shot my boss. Here is my gun. What should I do with the gun?"

Which of the following statements are ethically proper? Assume each statement is the only statement made.

(1) "Give it to me and I'll drop it in Beaver Lake."

(2) "I'll drive you to Beaver Lake and you can borrow my boat to drop it in the middle of the lake."

(3) "Drop it in Beaver Lake. That way no one will ever find it."

(4) "I'll keep it in my safety deposit box."

(5) "I'll keep it in my safety deposit box until the police ask for it. Then I will have to give it to them."

(6) "Bury it in your back yard."

(7) "Get rid of the gun. Then come back and see me and I'll represent you."

(8) "Call me if you are arrested or if the investigation focuses on you. Until then, do nothing."

(9) "You should confess and turn yourself in. I can help you with that."

(10) "I do not handle criminal cases, I'm giving you your \$50 back, and I am required as an officer of the court to report the crime to the police."

- A) Only (1), (4) and (8) are correct.
- B) Only (2), (5) and (7) are correct.
- C) Only (3), (6) and (9) are correct.

- D) Only (4), (6) and (10) are correct.
- E) Only (8), (9) and (10) are correct.
- F) Only (7), (9) and (10) are correct.
- G) Only (8) and (9) are correct.
- H) Only (5) and (9) are correct.
- I) Only (6) and (8) are correct.
- J) Only (9) and (10) are correct.

5. Jane Parker is retained by Bill Wallace to help him with the legal work in connection with opening a large music store. Parker incorporates the store, negotiates and reviews the terms of the lease, works out credit arrangements with suppliers, and helps Wallace get a registered trade name for the store. Six months after Parker's work is done and she has billed the store for her services and been paid:

- (1) May she perform the same legal services for Wendy Noonan, who wants to open a competing music store a block away from Wallace's store?
- (2) May she represent Wallace's landlord in an action to evict him for breach of his lease? The lease specifies that Wallace will sell only CDs, audiotapes, "and related products." The landlord claims that Wallace has violated the clause by offering to sell videotapes and musical instruments.
- (3) May she represent a funeral parlor adjoining Wallace's record store in an action to close the store under a municipal nuisance ordinance that permits such actions when a commercial establishment is responsible for "excessive noise"?

How would you answer (in the order asked) the above three questions?

- A) Yes, Yes, Yes
- B) Yes, Yes, No
- C) Yes, No, Yes
- D) Yes, No, No
- E) No, No, No
- F) No, No, Yes
- G) No, Yes, No
- H) No, Yes, Yes

6. Alice worked in the law firm of AAA, which represented Patient. She received confidential information about the case of Patient v. Doctor. She has now joined the law firm of XYZ, which represents the defendant Doctor in the same lawsuit.

- (1) If Alice is an attorney, XYZ is disqualified.
- (2) If Alice is an attorney, XYZ is not disqualified, provided the firm builds a Chinese wall around her.
- (3) If Alice was a law clerk and is now an attorney, XYZ is disqualified.
- (4) If Alice is a secretary, XYZ is disqualified.

- A) Only (1) is correct.
- B) Only (1) and (3) are correct.
- C) Only (1) and (4) are correct.
- D) Only (1),(3) and (4) are correct.
- E) Only (2) and (3) are correct.
- F) Only (2) and (4) are correct.
- G) Only (2), (3) and (4) are correct.

7. You represent Client, a telemarketer. Client cheats some people, including Gullible, out of thousands of dollars. Gullible accuses you and Client of fraud, and sends a letter telling all about the deception to the local paper which the paper publishes. You knew nothing about the fraudulent scheme. As soon as you read about the accusations against you, you send Gullible copies of letters between you and Client in which you advised Client not to undertake such schemes. No lawsuit, either civil or criminal, has been filed against either you or Client. Are you subject to discipline for sending the letters to Gullible?

- A) Yes, because your action violates the duty of confidentiality.
- B) No, because a lawyer may reveal confidential information to clear his name even before charges are filed.

- C) Yes, because no charges have been filed against you.
- D) No, because Client is not trustworthy and did not follow your advice.
- E) Yes, unless Client gave his permission for the letters to be sent to Gullible.

8. Attorney Suzanne Sugarbaker of the Sugarbaker Law firm is sitting in her black Cadillac, waiting to make a left-hand turn. There is a big Coca-Cola truck in front of Suzanne that is also waiting to turn left. There is no opportunity for the Coca-Cola truck to turn while the light is green or yellow. After the light is red, the truck then turns left, hitting three pedestrians in the crosswalk. Suzanne is the only witness. Coincidentally, the Sugarbaker Law Firm defends Coca-Cola in all of its personal injury cases. When Coca-Cola contacts the Sugarbaker Law Firm about the personal injury case to which Suzanne was a witness, may the firm take the case?

Choose the best answer.

- A) Yes, if Suzanne submits an affidavit describing the events taking place, rather than testifying in open court.
- B) Yes. Because the Sugarbaker Law Firm provides regular and continued representation of Coca-Cola in these types of cases, forcing Coca-Cola to seek new counsel would place too great a burden on the client.
- C) Yes. Only Suzanne is a necessary witness in the case; the other attorneys in the firm are not disqualified from acting as advocates.
- D) No. When one attorney in a firm is a necessary witness, and thus disqualified from a case, the entire firm is disqualified from the case.

9. Your client is charged with armed robbery. The elderly victim has testified at a hearing (and will testify at trial) that he was robbed at midnight. Your client tells you in confidence that he robbed the man and knocked him unconscious at 10:00 p.m. He then went to a friend's house to play poker. His friends will testify that he arrived at 11:00 p.m. and stayed until 1:00 a.m.

May you ethically have the friends testify as to the presence of your client at the poker game?

- A) No, because you know the victim is mistaken as to the time.
- B) Yes, because they will testify truthfully.
- C) No, because you will be assisting in fraud on the court.
- D) Yes, because your duty to your client always outweighs any responsibility to the court.
- E) No, because you know your client is guilty.

10. Ken Reeves, a member of the Supreme Court Committee on Profession Conduct, spoke to the class. From the following list, identify one statement that is incorrect or inconsistent with the comments that he made. (Note: there is more than one correct answer, that is, an incorrect statement; but you need to choose only one).

- A) The presence of lay persons on the Committee is valuable.
- B) A lawyer who observes another lawyer coming to court drunk has a duty to report that information to the committee.
- C) A lawyer who is reprimanded and then requests a hearing before the committee can be subject to a more severe sanction.
- D) The committee looks at the permanent "rap record" of the attorney and may use that as a basis to enhance the sanctions.
- E) An overdraft (that is, a check written that bounces for insufficient funds) on an attorney's trust account is an innocent mistake that does not involve the committee.
- F) Ken Reeves was taught Professional Responsibility by a professor who was later disbarred.
- G) Attorneys can be disciplined for filing the appellate record one day late in a criminal appeal.
- H) Attorneys who are disbarred customarily regain their licenses after five years.
- I) An attorney who is suspended is required to notify his clients in writing and to tell them to "come and get your file."
- J) An attorney who is suspended is barred from interviewing clients for the law firm.
- K) The committee can assess the costs of the disciplinary hearing against the disciplined attorney.
- L) The committee may place on probation an attorney who needs help by assigning a mentor to the attorney.
- M) The committee may suspend an attorney immediately and then proceed to seek disbarment.